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1                   A bill to be entitled  
2           An act relating to lien claims by homeowners'  
3           associations; amending s. 720.3085, F.S.; providing that  
4           when authorized by the governing documents, a homeowners'  
5           association has a lien on each parcel to secure the  
6           payment of assessments and other amounts; providing an  
7           exception to first mortgages of record; providing that the  
8           act does not bestow upon any lien, mortgage, or certified  
9           judgment of record on July 1, 2008, a priority that the  
10          lien, mortgage, or judgment did not have before that date;  
11          providing for the elements of a valid claim of lien;  
12          providing for the content of a recording notice; requiring  
13          a parcel owner or the parcel owner's agent or attorney to  
14          require the homeowners' association to enforce a recorded  
15          claim of lien against his or her parcel; providing  
16          procedures for notifying the homeowners' association;  
17          requiring that service be made by certified mail, return  
18          receipt requested; authorizing the homeowners' association  
19          to bring a civil action to foreclose a lien for  
20          assessments in the same manner in which a mortgage of real  
21          property is foreclosed; providing that the homeowners'  
22          association may also bring an action to recover a money  
23          judgment for the unpaid assessments without waiving any  
24          claim of lien; providing that if a parcel owner remains in  
25          possession of the parcel after a foreclosure judgment has  
26          been entered, the court may require the parcel owner to  
27          pay a reasonable rent for the parcel; providing that the  
28          homeowners' association may purchase the parcel at the  
29          foreclosure sale and hold, lease, mortgage, or convey the

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30 parcel; limiting the liability of a first mortgagee or its  
31 successor or assignee as a subsequent holder of the first  
32 mortgage who acquires title to a parcel by foreclosure or  
33 by deed in lieu of foreclosure for the unpaid assessments  
34 that became due before the mortgagee's acquisition of  
35 title; providing that the time limitations in the act do  
36 not apply if the parcel is subject to a foreclosure action  
37 or forced sale of another party; providing for a qualified  
38 offer during the pendency of a foreclosure action;  
39 providing procedures for offering and accepting a  
40 qualifying offer; requiring that the qualifying offer be  
41 in a particular format; providing an effective date.

42  
43 Be It Enacted by the Legislature of the State of Florida:

44  
45 Section 1. Section 720.3085, Florida Statutes, is amended  
46 to read:

47 720.3085 Payment for assessments; lien claims.--

48 (1) When authorized by the governing documents, the  
49 association has a lien on each parcel to secure the payment of  
50 assessments and other amounts provided for by this section.  
51 Except as otherwise set forth in this section, the lien is  
52 effective from and shall relate back to the date on which the  
53 original declaration of the community was recorded. However, as  
54 to first mortgages of record, the lien is effective from and  
55 after recording of a claim of lien in the public records of the  
56 county in which the parcel is located. This subsection does not  
57 bestow upon any lien, mortgage, or certified judgment of record  
58 on July 1, 2008, including the lien for unpaid assessments

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59 created in this section, a priority that, by law, the lien,  
60 mortgage, or judgment did not have before July 1, 2008.

61 (a) To be valid, a claim of lien must state the description  
62 of the parcel, the name of the record owner, the name and address  
63 of the association, the assessment amount due, and the due date.  
64 The claim of lien shall secure all unpaid assessments that are  
65 due and that may accrue subsequent to the recording of the claim  
66 of lien and before entry of a certificate of title, as well as  
67 interest, late charges, and reasonable costs and attorney's fees  
68 incurred by the association incident to the collection process.  
69 The person making the payment is entitled to a satisfaction of  
70 the lien upon payment in full.

71 (b) By recording a notice in substantially the following  
72 form, a parcel owner or the parcel owner's agent or attorney may  
73 require the association to enforce a recorded claim of lien  
74 against his or her parcel:

75  
76 NOTICE OF CONTEST OF LIEN

77  
78 TO: (Name and address of association)

79  
80 You are notified that the undersigned contests the claim of lien  
81 filed by you on \_\_\_\_\_, (year) \_\_\_\_\_, and recorded in Official Records  
82 Book \_\_\_\_\_ at page \_\_\_\_\_, of the public records of \_\_\_\_\_ County,  
83 Florida, and that the time within which you may file suit to  
84 enforce your lien is limited to 90 days following the date of  
85 service of this notice. Executed this \_\_\_\_\_ day of \_\_\_\_\_, (year).

86  
87 Signed: (Owner or Attorney)

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88  
89 After the notice of a contest of lien has been recorded, the  
90 clerk of the circuit court shall mail a copy of the recorded  
91 notice to the association by certified mail, return receipt  
92 requested, at the address shown in the claim of lien or the most  
93 recent amendment to it and shall certify to the service on the  
94 face of the notice. Service is complete upon mailing. After  
95 service, the association has 90 days in which to file an action  
96 to enforce the lien and, if the action is not filed within the  
97 90-day period, the lien is void. However, the 90-day period shall  
98 be extended for any length of time that the association is  
99 prevented from filing its action because of an automatic stay  
100 resulting from the filing of a bankruptcy petition by the parcel  
101 owner or by any other person claiming an interest in the parcel.

102 (c) The association may bring an action in its name to  
103 foreclose a lien for assessments in the same manner in which a  
104 mortgage of real property is foreclosed and may also bring an  
105 action to recover a money judgment for the unpaid assessments  
106 without waiving any claim of lien. The association is entitled to  
107 recover its reasonable attorney's fees incurred in an action to  
108 foreclose a lien or an action to recover a money judgment for  
109 unpaid assessments.

110 (d) If the parcel owner remains in possession of the parcel  
111 after a foreclosure judgment has been entered, the court may  
112 require the parcel owner to pay a reasonable rent for the parcel.  
113 If the parcel is rented or leased during the pendency of the  
114 foreclosure action, the association is entitled to the  
115 appointment of a receiver to collect the rent. The expenses of  
116 the receiver must be paid by the party who does not prevail in

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117 the foreclosure action.

118 (e) The association may purchase the parcel at the  
119 foreclosure sale and hold, lease, mortgage, or convey the parcel.

120 (2) (a) ~~(1)~~ A parcel owner, regardless of how his or her  
121 title to property has been acquired, including by purchase at a  
122 foreclosure sale or by deed in lieu of foreclosure, is liable for  
123 all assessments that come due while he or she is the parcel  
124 owner. The parcel owner's liability for assessments may not be  
125 avoided by waiver or suspension of the use or enjoyment of any  
126 common area or by abandonment of the parcel upon which the  
127 assessments are made.

128 (b) ~~(2)~~ A parcel owner is jointly and severally liable with  
129 the previous parcel owner for all unpaid assessments that came  
130 due up to the time of transfer of title. This liability is  
131 without prejudice to any right the present parcel owner may have  
132 to recover any amounts paid by the present owner from the  
133 previous owner.

134 (c) Notwithstanding anything to the contrary contained in  
135 this section, the liability of a first mortgagee, or its  
136 successor or assignee as a subsequent holder of the first  
137 mortgage who acquires title to a parcel by foreclosure or by deed  
138 in lieu of foreclosure for the unpaid assessments that became due  
139 before the mortgagee's acquisition of title, shall be the lesser  
140 of:

141 1. The parcel's unpaid common expenses and regular periodic  
142 or special assessments that accrued or came due during the 12  
143 months immediately preceding the acquisition of title and for  
144 which payment in full has not been received by the association;  
145 or

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146       2. One percent of the original mortgage debt.

147  
148       The limitations on first mortgagee liability provided by this  
149       paragraph apply only if the first mortgagee filed suit against  
150       the parcel owner and initially joined the association as a  
151       defendant in the mortgagee foreclosure action. Joinder of the  
152       association is not required if, on the date the complaint is  
153       filed, the association was dissolved or did not maintain an  
154       office or agent for service of process at a location that was  
155       known to or reasonably discoverable by the mortgagee.

156       (3) Assessments and installments on assessments that are  
157       not paid when due bear interest from the due date until paid at  
158       the rate provided in the declaration of covenants or the bylaws  
159       of the association, which rate may not exceed the rate allowed by  
160       law. If no rate is provided in the declaration or bylaws,  
161       interest accrues at the rate of 18 percent per year.

162       (a) If the declaration or bylaws so provide, the  
163       association may also charge an administrative late fee in an  
164       amount not to exceed the greater of \$25 or 5 percent of the  
165       amount of each installment that is paid past the due date.

166       (b) Any payment received by an association and accepted  
167       shall be applied first to any interest accrued, then to any  
168       administrative late fee, then to any costs and reasonable  
169       attorney's fees incurred in collection, and then to the  
170       delinquent assessment. This paragraph applies notwithstanding any  
171       restrictive endorsement, designation, or instruction placed on or  
172       accompanying a payment. A late fee is not subject to the  
173       provisions of chapter 687 and is not a fine.

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174 (4) A homeowners' association may not file a record claim  
175 of lien against a parcel for unpaid assessments unless a written  
176 notice or demand for past due assessments as well as any other  
177 amounts owed to the association pursuant to its governing  
178 documents has been made by the association. The written notice or  
179 demand must:

180 (a) Provide the owner with 45 days following the date the  
181 notice is deposited in the mail to make payment for all amounts  
182 due, including, but not limited to, any attorney's fees and  
183 actual costs associated with the preparation and delivery of the  
184 written demand.

185 (b) Be sent by registered or certified mail, return receipt  
186 requested, and by first-class United States mail to the parcel  
187 owner at his or her last address as reflected in the records of  
188 the association, if the address is within the United States, and  
189 to the parcel owner subject to the demand at the address of the  
190 parcel if the owner's address as reflected in the records of the  
191 association is not the parcel address. If the address reflected  
192 in the records is outside the United States, then sending the  
193 notice to that address and to the parcel address by first-class  
194 United States mail is sufficient.

195 (5) The association may bring an action in its name to  
196 foreclose a lien for unpaid assessments secured by a lien in the  
197 same manner that a mortgage of real property is foreclosed and  
198 may also bring an action to recover a money judgment for the  
199 unpaid assessments without waiving any claim of lien. The ~~Such~~  
200 action to foreclose the lien may not be brought until 45 days  
201 after the parcel owner has been provided notice of the  
202 association's intent to foreclose and collect the unpaid amount.

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203 The notice must be given in the manner provided in paragraph  
204 (4) (b) and the notice may not be provided until the passage of  
205 the 45 days required in paragraph (4) (a).

206 (a) The association may recover any interest, late charges,  
207 costs, and reasonable attorney's fees incurred in a lien  
208 foreclosure action or in an action to recover a money judgment  
209 for the unpaid assessments.

210 (b) The time limitations in this subsection do not apply if  
211 the parcel is subject to a foreclosure action or forced sale of  
212 another party, or if an owner of the parcel is a debtor in a  
213 bankruptcy proceeding ~~The association may purchase the parcel at~~  
214 ~~the foreclosure sale and hold, lease, mortgage, or convey the~~  
215 ~~parcel.~~

216 (6) If after service of a summons on a complaint to  
217 foreclose a lien the parcel is not the subject of a mortgage  
218 foreclosure or a notice of tax certificate sale, ~~or~~ the parcel  
219 owner is not a debtor in bankruptcy proceedings, or the trial of  
220 or trial docket for the lien foreclosure action is not set to  
221 begin within 30 days, the parcel owner may serve and file with  
222 the court a qualifying offer at any time before the entry of a  
223 foreclosure judgment. For purposes of this subsection, the term  
224 "qualifying offer" means a written offer to pay all amounts  
225 secured by the lien of the association plus amounts ~~interest~~  
226 accruing during the pendency of the offer ~~at the rate of interest~~  
227 ~~provided in this section.~~ The parcel owner may make only one  
228 qualifying offer during the pendency of a foreclosure action. If  
229 a parcel becomes the subject of a mortgage foreclosure or a  
230 notice of tax certificate sale while a qualifying offer is  
231 pending, the qualifying offer becomes voidable at the election of



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232 the association. If the parcel owner becomes a debtor in  
233 bankruptcy proceedings while a qualifying offer is pending, the  
234 qualifying offer becomes void.

235 (a) The parcel owner shall deliver a copy of the filed  
236 qualifying offer to the association's attorney by hand delivery,  
237 obtaining a written receipt, or by certified mail, return receipt  
238 requested.

239 (b) The parcel owner's filing of the qualifying offer with  
240 the court stays the foreclosure action for the period stated in  
241 the qualifying offer, which may not exceed 60 days following the  
242 date of service of the qualifying offer and no sooner than 30  
243 days before the date of trial, arbitration, or the beginning of  
244 the trial docket, whichever occurs first, to permit the parcel  
245 owner to pay the qualifying offer to the association plus any  
246 amounts ~~interest~~ accruing during the pendency of the offer.

247 (c) The qualifying offer ~~of the parcel owner~~ must be in  
248 writing, be signed by all owners ~~the owner~~ of the parcel and the  
249 spouse of any ~~the~~ owner if the spouse resides in or otherwise  
250 claims ~~holds~~ a homestead interest in the parcel, be acknowledged  
251 by a notary public, and be in substantially the following form:  
252 ~~state the total amount due the association, state that the total~~  
253 ~~amount due the association is secured by the lien of the~~  
254 ~~association, state that the association is entitled to foreclose~~  
255 ~~the lien and obtain a foreclosure judgment for the total amount~~  
256 ~~due if the parcel owner breaches the qualifying offer, state that~~  
257 ~~the parcel owner will not endanger the priority of the lien of~~  
258 ~~the association or the amounts secured by the lien, and state the~~  
259 ~~actual date or dates the association will receive the total~~  
260 ~~amount due from the parcel owner.~~

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261  
262 QUALIFYING OFFER  
263 AUTOMATIC STAY INVOKED PURSUANT TO F.S. 720.3085  
264  
265 I/We, [Name(s) of Parcel Owner(s)], admit the following:  
266 1. The total amount due the association is secured by the  
267 lien of the association.  
268 2. The association is entitled to foreclose its claim of  
269 lien and obtain a foreclosure judgment for the total amount due  
270 if I/we breach this qualifying offer by failing to pay the amount  
271 due by the date specified in this qualifying offer.  
272 3. I/We will not permit the priority of the lien of the  
273 association or the amounts secured by the lien to be endangered.  
274 4. I/We hereby affirm that the date(s) by which the  
275 association will receive \$ [specify amount] as the total amount  
276 due is [specify date, no later than 60 days after the date of  
277 service of the qualifying offer and at least 30 days before the  
278 trial or arbitration date], in the following amounts and dates:  
279 5. I/We hereby confirm that I/we have requested and have  
280 received from the homeowners' association a breakdown and total  
281 of all sums due the association and that the amount offered above  
282 is equal to or greater than the total amount provided by the  
283 association.  
284 6. This qualifying offer operates as a stay to all portions  
285 of the foreclosure action which seek to collect unpaid  
286 assessments as provided in s. 720.3085.  
287  
288 Signed: (Signatures of all parcel owners and spouses, if any)  
289

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290 Sworn to and subscribed this (date) day of (month), (year),  
291 before the undersigned authority.

292

293 Notary Public: (Signature of notary public)

294

295 If the parcel owner makes a qualifying offer under this  
296 subsection, the association may not add the cost of any legal  
297 fees incurred by the association within the period of the stay  
298 other than costs acquired in defense of a mortgage foreclosure  
299 action concerning the parcel, a bankruptcy proceeding in which  
300 the parcel owner is a debtor, or in response to filings by a  
301 party other than the association in the lien foreclosure action  
302 of the association.

303 (7)~~(d)~~ If the parcel owner breaches the qualifying offer,  
304 the stay shall be vacated and the association may proceed in its  
305 action to obtain a foreclosure judgment against the parcel and  
306 the parcel owners for the amount in the qualifying offer and any  
307 amounts accruing after the date of the qualifying offer.

308 Section 2. This act shall take effect July 1, 2008.